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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 180117042-8884-02]**

**RIN 0648-XG651**

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS is transferring 129.2 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category, and 9.9 mt from the Harpoon category to the General category for the remainder of the 2018 fishing year, to account for accrued overharvests of previous time period subquotas. This action is intended to provide opportunities for General category fishermen to participate in the December General category fishery, which is scheduled to reopen on December 1, 2018, and is based on consideration of the regulatory determination criteria regarding inseason adjustments. This action would affect Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

**DATES:** The quota transfer is effective *[insert date of filing for public inspection with the Office of the Federal Register]* through December 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Uriah Forest-Bulley, 978-675-2154, or Brad McHale, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

NMFS published a final rule (*i.e.*, the “quota rule” (83 FR 51391, October 11, 2018)) that increased the baseline U.S. BFT quota from 1,058.79 mt to 1,247.86 mt consistent with a 2017 ICCAT recommendation and accordingly increased the category quotas for 2018. Within the General category quota, each time period (January, June through August, September, October through November, and December) is further allocated a subquota or portion of the annual General category quota. Although it is called the “January” subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. The baseline subquotas for each time period are as follows: 29.5 mt for

January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward from one time period to the next and is available for use in subsequent time periods within the fishing year, which coincides with the calendar year.

For the January 2018 subquota period, NMFS transferred 14.3 mt of BFT quota from the December 2018 subquota period, and transferred 10 mt from the Reserve category, resulting in an adjusted subquota of 53.8 mt for the January 2018 period and a subquota of 14.6 mt for the December 2018 period (82 FR 60680, December 22, 2017, and 83 FR 9232, March 5, 2018, respectively). For 2018, NMFS also transferred a total of 75 mt from the Reserve and 40 mt from the Harpoon category to the General category through two inseason actions in September and October, resulting in an adjusted 2018 General category quota of 680.8 mt and adjusted 2018 Harpoon category of 36 mt (83 FR 47843, September 21, 2018, and 83 FR 50857, October 10, 2018, respectively). NMFS closed the October through November General category fishery after multiple reopenings when the subquota (127.2mt) was met, effective November 16, 2018 (83 FR 57340, November 15, 2018). The 2018 General category fishery reopens December 1, 2018, and will remain open until December 31, 2018, or until the General category quota is reached, whichever comes first. Prior to this action, the adjusted Reserve category quota was 142.9 mt, and was most recently adjusted in the October 11, 2018 quota rule, which augmented the 2018 BFT Reserve category quota with available underharvest of the 2017 adjusted U.S. BFT quota. The Harpoon category fishery automatically closed for the year on November 15, 2018.

## **Quota Transfer**

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria at § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to the General category fishery. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT over the longest time-period allowable would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS considered the catches of the General category quota to date (including during the summer/fall and winter fisheries in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Preliminary landings data as of November 26, 2018, indicate that the Harpoon category landed 26.1 mt of the 36 mt adjusted Harpoon quota before closing. They also indicate that the General category has landed 770 mt this year, which exceeds the overall General category adjusted quota of 680.8 mt. For all commercial categories, however, approximately 23 percent (267.9 mt) of the total of the BFT category quotas remains available as of November 26, 2018 (i.e., 881 mt of 1148.9 mt has been harvested), and NMFS anticipates that some amount of quota may remain unused by the end of the year even with the transfer. Absent a transfer, the December General category fishery

would remain closed, even though quota remains available within the overall quota for the year and NMFS anticipates that commercial-sized BFT will be readily available on the fishing grounds when the fishery is otherwise scheduled to re-open December 1, 2018. Transferring 129.2 mt of BFT quota from the Reserve category, and 9.9 mt from the Harpoon category would allow the General category fishery to resume as scheduled and would result in a total of 50.0 mt being available to the General category in December after accounting for quota exceedances. It would also leave 13.7 mt in the Reserve category to account for any BFT mortalities associated with research and/or any overharvests that may occur in December. In analyzing the criteria for transfer, NMFS also considered the fact that BFT quota management throughout the year had been informed, in part, by anticipated upward adjustments to the overall quota. Such adjustments, while not certain, were anticipated as a result of the 2017 ICCAT recommendation increasing the overall BFT quota and upward adjustments for last year's underharvests, although any such adjustments would only take effect after appropriate rulemaking procedures and actions (i.e., the 2018 quota rule).

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. A portion of the transferred quota covers overharvests in the category to date, and NMFS anticipates that General category participants will be able to harvest the remaining 50 mt of transferred BFT quota by the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2018 landings and dead discards. In the last several years, total U.S. BFT landings have been below the total available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2018 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and NMFS anticipates having sufficient quota to do that, even with this 139.1 mt transfer to the General category.

This transfer would be consistent with the current U.S. quota, which was established and analyzed in the 2018 BFT quota final rule, and with objectives of the 2006 Consolidated HMS FMP and amendments. (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

Based on the considerations above, NMFS is transferring 129.2 mt from the Reserve category to the General category. Therefore, NMFS adjusts the General category December subquota quota to 50.0 mt for the 2018 General category fishing season and adjusts the Reserve category quota to 13.7 mt. The 2018 General category fishery reopens December 1, 2018, and will remain open until December 31, 2018, or until the adjusted General category quota is reached, whichever comes first.

### **Monitoring and Reporting**

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.*, quota adjustment or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

NMFS reminds General category participants that when the fishery reopens December 1, 2018, the BFT General category daily retention limit will be one large medium or giant BFT (measuring 73" or greater) per vessel per day/trip.

### **Classification**

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this

action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the remainder of 2018 is impracticable and contrary to the public interest as such a delay would result in continued closure of the General category fishery (because the available quota has been exceeded) and the need to re-open the fishery later in the December time period, rather than the fishery automatically re-opening on December 1. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.27(a)(9) (Inseason adjustments) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 29, 2018.

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Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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